

September 20, 2023

The Honorable Judge Margo K. Brodie
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Courtroom 6F
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust
Litigation*; Case No. 05-md-1720 (MKB)(VMS)

Dear Judge Brodie:

Class Counsel writes on behalf of Rule 23(b)(3) Class Plaintiffs in response to the pre-motion conference letter [ECF No. 8953] filed by counsel to Fikes on September 18. Motion practice is unnecessary because the relief that Fikes seeks is both unripe and unnecessary.

The issue is unripe because Fikes has not conferred any benefit on the class from which it seeks to be paid a fee. Both this Court and the Second Circuit rejected Fikes's ascertainability and conflict arguments. And Fikes's most recent motion to be appointed subclass counsel has been denied, albeit without prejudice, largely on the grounds that it was unripe until the claims process has begun and any need for appointment of counsel crystallizes. [Hr'g Tr., Sept. 7, 2023, 42:10-43:9].

Setting aside the merits of Fikes's requested relief, it is unnecessary. Class Counsel determined months ago to hold back a sufficient portion of the attorney-fee award to account for potential issues related to allocations, as is prudent in a case of this magnitude.

Respectfully submitted,

/s/ K. Craig Wildfang

K. Craig Wildfang
Thomas J. Undlin
Ryan W. Marth
Robins Kaplan LLP

/s/ Merrill G. Davidoff

Merrill G. Davidoff
H. Laddie Montague, Jr.
Michael J. Kane
**Berger Montague
PC**

/s/ Alexandra S. Bernay

Alexandra S. Bernay
Patrick J. Coughlin
**Robbins Gellar Rudman
& Dowd LLP**

cc: All Counsel via ECF

94186328.2